1944. K Legal DEPARTMENT

Examined
MCB
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A- BRANCH

File No. S. Kan. 2/44

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**Subject:—** Civil Suit No. 49 of 1944.

Sharmao Vithal Gaitonde — —— Pltff.

V/s.

The Province of Bombay and

V. R. Haldipur. — — — — — —— Defts.

Claim — Rs. 5.

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P.S.S
F-C

File No. S. Kan. 2/44

Std Sectt. Slip 24-B

[redacted] Legal [redacted] ment File No. 5 Kan 2/44.

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| | | S. V. Gaitonde | |
| | | Vs. | |
| | | Province of Bombay and V. R. Haldipur | |
| | | claim — Rs. 5— | |
| | | For account and damages. | |
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In the Court of the First Class Subjudge,
K a r w a r.

C.S. No. 49 of 1944.

Shamrao Vithal Gaitonde, age about 55 years - Gaud Saraswat Brahmin, Forest Contractor, resident of Karwar, Taluka K a r w a r..... Plff.

Vs.

1. The Province of Bombay

2. Vasudev Ramachandra Haldipurkar, age about 45 years, Gaud Saraswat Brahmin, Forest Contractor of Karwar..... Defts.

Claim Rs. 5/-

The above-named Plff. states as follows :-

(1) Plff. is a Forest Contractor. In the auction held by the Divisional Forest Officer, N.D., Kanara, in 1938, Plff. purchased the coupe No. 35 A, Block No. 2, Range Karwar, for Rs. 1987. He passed an agreement in favour of Government about this contract and commenced the work in the coupe. The work of felling and removal of the materials was required to be completed by the end of April 1940. Owing to his illness etc., Plff. agreed to sell to Deft. 2 certain materials out of the coupe that would be cut by about the end of 1939. Accordingly, Deft. 2 was given delivery of 862 tons of fuel and 158½ khandis of logs in January, 1940 after measurement for which a receipt was passed by him. Plff. has received from Deft. 2 -- Rs. 2,300/- the value of the materials ~~that is~~ sold to him. Under the terms of the agreement of sale Deft. 2 was not entitled to any more trees or materials from the coupe. Plff. was the sole owner of these materials and he alone was entitled to remove them. Deft. 2 removed the materials sold to him by Plff. by June, 1940. He was not entitled to cut or remove any more materials after January, 1940. Yet he was found to cut unauthorisedly trees from the said coupe from February 1940 onward in spite of protest from

Plff. As these trees belonged to Plff., he was entitled to remove them. Plff. however, being unable to remove them within the stipulated time owing to the prevailance of cattle disease, he got the period for removal of his -- materials extended up to end of February, 1941. According to this extension Plff. alone was entitled to remove the materials but in February 1940 and onwards Deft. 2, however, began to remove these materials, Plff. applied to the D.F.O. after explaining the facts fully not to allow Deft. 2 to -- remove the materials and not to issue passes to him for -- removal. Nevertheless, the D.F.O. relying on the misrepresentation of things by Deft. 2 allowed Deft. 2 to remove the materials on the ground that they belonged to Deft. 2 in view of the agreement of sale. Deft. 2 relying on the passes issued by the Forest Department continued the removal of the Plff's materials from the coupe till Feb. 1941. The Forest Department thus acted illegally in allowing Deft. 2 to remove Plff's materials. Deft. 2 also acted illegally and contrary to the terms of the agreement of sale in so felling and removing the materials belonging to Plff. He had no right to any materials that were cut in February, 1940 and onwards. Thus both the Forest Department and Deft.2 have caused loss to the Plff by their illegal acts. Notice dated 8th August, 1941 was given to Deft. 1 regarding this matter but with no effect. Deft. 2 also was asked to make good the loss caused by him but he has not yet done any thing. Hence, both Defts. are jointly liable for the loss caused to Plff by their illegal acts. The Forest Department and Deft.2 are in possession of accounts regarding the removal of the materials belonging to the Plff. They have not, as yet, -- supplied the Plff. with the details of the account. Hence, Plff. is entitled to claim account of the loss from both the

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Defts. Hence, this suit for account. Cause of action for the suit arose from the end of February, 1941.

(2) As the cause of action for this suit has arisen within the jurisdiction of this Court, this Court has jurisdiction to entertain this suit.

(3) The claim for the purpose of jurisdiction of this suit is Rs. 5/-.

(4) It is, therefore, prayed, that a decree may be passed in favour of the Plff. for the following reliefs:

(a) The Defts may be ordered to render true and correct account of the trees felled and materials removed out of the coupe from February, 1940 to end of February, 1941 and the amount found due may be ordered to be paid to the Plff. from the Defts. or such of them as may be found liable for the loss.

Plff. is ready to pay the court fee on the amount that may be found due on taking account.

Karur 20/2/1944

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In the Court of First Class Sub-Judge at Karwar.

Civil Suit No.49 of 1944.

Shamrao Vithal Gaitonde. ... ... Plaintiff.

V/s

1) The Province of Bombay. ... ...
2) V. R. Haldipur, Karwar. ... ... } Defendants.

Written statement of the Defendant No.1 abovenamed is as follows:

1. Plaintiff's claim is not true and is denied.

2. Plaintiff signed the agreement for felling, collection, removal and purchase of timber etc. on 30-8-38. The period of this contract expired on 30-4-39. But subsequently by order dated 20/22-7-39 the Conservator of Forests extended the period for felling till 31-3-40 and that for removal till 30-4-40.

3. By an application dated 18-7-39 addressed to the Divisional Forest Officer the plaintiff stated that he had sold the fuel and timber from the jungle to Defendant No.2 and had executed saledeed dated 14-7-39 by which Defendant No.2 alone had the right over the material. Plaintiff hence requested that authorization to issue passes should issue in the name of Defendant No.2. This Defendant is not aware of any agreement as is alleged in the plaint, namely that "Plaintiff agreed to sell to Defendant No.2 certain material out of the coupe that would be cut by about the end of 1939". This Defendant denies the allegation and states that the Plaintiff had sold to Defendant No.2 the whole of the cut and uncut material of the coupe without any restriction whatever as to period such as the one alleged of the end of 1939.

4. This Defendant has no knowledge of the alleged receipt passed by Defendant No.2 to the Plaintiff and the payment of Rs.2300/-. This Defendant denies the allegation that Defendant No.2 was not entitled to any more trees or material and that Plaintiff was the sole owner entitled to remove that.

5. By application dated 10-5-40 addressed to the Divisional Forest Officer the Plaintiff stated that the work of felling was complete and that though the removal of the material was the duty of Defendant No.2, the work of carting could not be done on

account of cattle disease. Plaintiff then prayed for extension of time for removal. Plaintiff thus admitted that the whole of the material felled till then belonged to Defendant No.2 and was to have been removed by Defendant No.2. The allegations to the contrary in the plaint are denied. It is also denied that 'according to the extension Plaintiff alone was entitled to remove the materials.' Plaintiff obtained the extension, as he was bound to do, for the benefit of his purchaser Defendant No.2.

6. Relying upon the Plaintiff's own applications from time to time and the saledeed executed by Plaintiff in favour of Defendant No.2 the Forest Authority allowed the Defendant No.2 to remove the material. The action of the Forest Authority was legal and Plaintiff is estopped from making his present contentions. The Orders made by the Forest Authority were bona fide and legal and valid and Plaintiff is not entitled to sue the Government. This Defendant further affirms that Plaintiff ~~has~~ had no ownership left in any material after the saledeed of 18-7-39 and that therefore the removal by Defendant No.2 has in fact caused no loss to plaintiff and this suit for damages is not maintainable against either Defendant.

7. The allegation that the two Defendants are jointly liable for the loss is denied. This Defendant had no commondesign with Defendant No.2. There is no cause of action against this Defendant.

8. The suit is barred by limitation.

9. Plaintiff's suit is false and all his allegations and contentions inconsistent with the above are denied. Plaintiff is not entitled to any relief and the suit should be dismissed with separate set of costs in favour of this Defendant.

L.D.

This relates to Karwar Civil Suit No. 49 of 1944. Plaintiff was a purchaser of a forest coupe. Under certain circumstances the forest authority allowed defendant No. 2 to remove materials from that coupe. Plaintiff contends that this was wrongful and holds both Government and defendant 2 responsible for his loss. This is a suit for account and damages.

2. The suit is defensible but as the orders passed by the Divisional Forest Officer were wrong, a brief statement of facts is necessary here. For a ~~further~~ fuller statement please see the accompanying Chronological Statement of Facts. Plaintiff purchased the coupe for 1938-39, but was unable to pay the full purchase price during the year. A resale was ordered, but before it took place, the amount was paid on 14.7.1939 and in view as it appears of certain past records of the plaintiff, the Conservator of Forests cancelled the resale and extended the contract period for felling and removal of material till April 1940.

3. On 18.7.1939 plaintiff executed a sale deed and sold to defendant No. 2 the whole cut and uncut material in the coupe. He also intimated the D.F.O. of the sale and requested that defendant 2 may be allowed to issue the transit passes in his own name. The request was granted by the D.F.O. In fact even the felling and other working of the coupe was allowed to be done by defendant 2.

4. The material could not be removed before April 1940 on account of difficulties of carting caused by a cattle disease. On 10.5.1940 plaintiff applied for further extension of time; (the contract was in his name and he had also bound himself in the sale deed of 18.7.1939 to obtain any necessary extension for the benefit of defendant 2). Out of again purely personal considerations, the Conservator of Forests who was unaware that the whole benefit would go to defendant 2 granted the extension

sought till February 1941 and further even waived the payment of penalty.

5. Now a dispute began, both plaintiff and defendant 2 claiming the authorization to issue passes. The plaintiff contended that according to the agreement between him and defendant 2 the material felled after February 1940 belonged to him and not to defendant 2, that the extension had been obtained by him for his own benefit, and that defendant 2's authority had expired with the expiry of the contract period in April 1940. The D.F.O, took the view, after consulting the District Govt. Pleader, that defendant 2 was the owner of the material and granted the authorization to defendant 2.

6. Plaintiff applied to the Conservator and Chief Conservator of Forests. For their opinion and orders please see pp. 153, 158 and 159 of File I. It is submitted that their opinion is correct. There was no privity of contract of any kind between Govt. and defendant 2, and it was wrong of the D.F.O. to undertake the judicial responsibility of determining a dispute of ownership between plaintiff and a person to whom Government owed no contractual obligation. It even appears that notwithstanding Condition II of the contract which prohibits a contractor from assigning his contract or any share or interest therein without previous permission, the coupe was allowed to be worked by defendant 2. One irregularity led to another.

7. Plaintiff sues for account and damages in respect of trees felled and materials removed from February 1940 onwards. As regards Government, one ground of defence is, as explained in the brief, that Government cannot be considered a joint wrong-doer with defendant 2 as its orders were based upon plaintiff's own several applications and the sale deed of 18.7.1939 and were bona fide and without concert with defendant 2. On merits it really appears that the D.F.O's decision was correct and that it can be contended that plaintiff in

fact suffered no loss and is not entitled to damages because he had no ownership left in the goods. A plea of limitation is also raised on the footing that the cause of action, if any, arose in February 1940.

8. Sanction may be accorded to the defence of the suit on the lines of the appended brief. A draft written statement is also put up.

1/8

R.L.A. 1/8/44

Wire Forest please comment in detail ?

Secy PD 7.8.44

PD

Rev. Deptt.

The facts of the case are fully stated in the chronological statement of facts prepared by the R.L.A's office.

2. According to the terms of the agreement Mr. Gaikwade was to abstain from sub-letting or assigning his Contract or any portion thereof or share or interest therein, to any person whatsoever without the previous permission in writing of the D.F.O. Mr. Gaikwade in contravention of this condition appears to have ipso facto assigned his rights under the agreement to Mr. Haldipurkar for consideration. Both the D.F.O. and the Conser. of Forests were apprised by the parties concerned of the transaction but they appear to have taken no action against Mr. G. for breach of condition of the agreement and they issued transit passes in favour of Mr. H. This means that they acquiesced in the assignm

of the Contract and impliedly granted sanction to it. As to the D.F.O's action in allowing Mr. H. to fell and remove timber from the Coupe appears to be legally in order as from the date of the assignment and acquiescence in the Contract. Mr. G. ipso facto ceased to have any rights under the Contract. The L.D. may consider this point for defending the suit.

DJW 16/8/44

Seen 17/8.

W.O.T. to the R.D.A., dated 18th Aug. 1944. * with Case Papers

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L. D. 18. AUG. 1944 H

L.D.

No defence has been omitted; and the R.D. note has failed to appreciate both facts and law.

The note states (A) that plaintiff contravened condition 2 of the Agreement; (B) that the D.F.O. and the Conservator were apprised of the transaction and they acquiesced in the assignment and thus impliedly granted sanction to it; (C) that by reason of such assignment and acquiescence plaintiff "ipso facto ceased to have any rights under the contract from the date of assignment"; and (D) that therefore the D.F.O's action in allowing defendant 2 to work the coupe was "legally in order".

I shall consider these statements very briefly

(B) The reference to the Conservator is wrong. Defendant 2 was first mentioned to that officer in any connection in plaintiff's application for extension dated 10.5.40 which was forwarded by the D.F.O. on 1.7.40: See Conservator's letter at p. 153 and D.F.O's

*Pp. 113, 114

File I. Urgent. Regy

PC issue W.O.T. to the R.D.A. with papers. BN 19.8.44

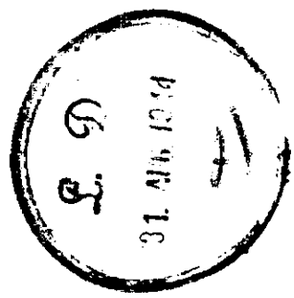
reply at pp. 154-55. There was no express or implied sanction of the Conservator for defendant 2's working of the coupe which has been completed long before 10.5.40. I state this only as a fact and not as a matter of legal importance.

(C) A contention that plaintiff "ipso facto ceased to have any rights under the contract from the date of its assignment" will not lie because the contract was not considered as assigned and plaintiff was twice required, namely on 31.7.39 and 9.10.40 to execute supplements to Agreement. In a case of assignment the assignor definitely vanishes from the scene. (This applies to implied consent also). As to D.F.O's attitude see paras. 3 and 4 of his recommendation dated 26/29.9.40 at page 117, File I. Of course rights under contract are different from rights in goods. The latter have been duly considered in the brief, as will be pointed out presently.

(D) The D.F.O. was informed of the sale transaction on 24.7.39. Attached to page 105, File I, is a note which shows that it did occur to somebody that "it would have been better had the contract been transferred in the name of ~~one~~ mr Haldipur, so that he may be responsible to the department for the working of the coupe". So it was recognised that there was no transfer of contract and that defendant 2 was not responsible to the department. It was probably in view of this position that the orders passed by the D.F.O. only provided that "there is no objection to issue transit passes for the material in favour of ~~one~~ mr Haldipur" (p. 105). That order appears to be unobjectionable; but defendant 2's working of the coupe was not "in order" as authorized

This is not a suit to set aside any order of a public officer. It is a suit for damages for wrongful appropriation of goods which according to plaintiff belonged to

himself. Naturally the appropriate defence on merits would be that there was no wrongful appropriation and that the goods in fact belonged to defendant 2 who removed them or was permitted to remove. This defence is outlined in paras. 4 and 5 of the grounds of defence. Para. 4 explains how such a defence is tenable: See the last sentence there: "Govt. can thus contend that the title to the goods was in defendant 2"". Para. 5 describes the evidence, namely the sale deed looked at in the light of previous and subsequent correspondence and circumstan .., and states that "plaintiff had parted with his whole interest in the coupe" Probably this meets the wishes of the R.D. note, although they are expressed differently.



Condition 2 of the Agreement is intended for the benefit of Govt. The question therefore was not so much of plaintiff contravening it' but of his having been allowed to contravene it. And this is mainly an administrative question. Already, some loss has been caused to Govt. Had there been a formal substitution of defendant 2 as contractor in place of plaintiff, it is doubtful whether the extension of time for removal would have been granted after April 1940, and it is almost certain that the Conservator would not have waived the payment of additional price by way of penalty. It probably cannot be said that paras. 3 and 4 of D.F.O's recommendation dated 26/29.9.40, page 117, File I, represented the facts as he knows them fully.

There is difference between merits of the suit and the irregular procedure adopted. I have said before (para 7 of my earlier note) that on merits the DFO's ultimate decision was correct. But the procedure is at least in part responsible for involving the Govt in litigation.

V. Iyengar
Regy
Al. issue w.v.to
to A.D. with ph
3 copies
3.8.41.

24/8

RLA

I agree with D.A. There is no need to amend the defence
as to the ~~Secy~~ R.D. P.Rao 29/8/41

× No. 6074
S. 30.

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*Suits:*

Karwar.

For account and damages.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 6119.

Bombay Castle, 1st September 1944.

Letter from the Divisional Forest Officer, Western Division, Kanara, No. C. 20/61, dated the 17th April 1944—Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE FIRST CLASS SUB-JUDGE AT KARWAR.

Civil Suit No. 49 of 1944.

Sharmao Vithal Gaitonde .. .. .. Plaintiff;

*versus*

The Province of Bombay and V. R. Haldipur .. .. Defendants.

Claim—Rs. 5.

Endorsement by the Conservator of Forests, Southern Circle, No. 28/11/4, dated the 31st May 1944.

Endorsement by the Chief Conservator of Forests, Province of Bombay, No. 34/799, dated the 8th June 1944—Forwarding the above with his concurrence.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 310, dated the 13th June 1944—Forwarding the above.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. N. MOOS,
Secretary to Government.

G. R., No. 6119, L. D., dated the 1st September 1944.

To

* The Revenue Department,
* The Commissioner, Southern Division,
The Chief Conservator of Forests, Province of Bombay,
The Conservator of Forests, Southern Circle,
The Divisional Forest Officer, Western Division, Kanara,
The District Government Pleader, Karwar.

Issued CSP 2/11

* With a copy of the brief.

No. of 1944.

Copy forwarded for information and guidance to

Submitted after issue — New file
File in a new suit file — New file 2/11
S. [illegible]

AHY 3-11 Advt. 3/11 4/11/44

-57 15

KARWAR CIVIL SUIT No. 49 OF 1944.

*Chronological Statement of Facts.*

Plaintiff sues for an account of the trees felled and materials removed out of the forest coupe described in suit from February 1940 to the end of February 1941 and for a decree for the amount found due from the defendants or such of them as may be found liable for the plaintiff's loss.

p. 7 of file IV. By letter dated 24th/27th June 1938, the plaintiff was informed by the Divisional Forest Officer that his tender for Gopshitta Coupe No. 35A of Block No. II for Rs. 1,987 had been accepted, that the amount of Rs. 200 received with the tender had been adjusted towards deposit as security for the due fulfilment of the contract, and that he should pay Rs. 497 being the ¼th amount of the purchase money and sign the agreement within 7 days of the receipt of the letter.

p. 4 do. On 30th June 1938, plaintiff applied for time for payment of the said first instalment till October 1938 when the second

p. 8 do. instalment would fall due. By letter dated the 22nd July 1938, the Conservator of Forests rejected the plaintiff's request and demanded payment within 10 days of the receipt of the letter, failing which the contract would be concluded and the coupe resold at plaintiff's risk.

p. 8 of file I. Plaintiff having failed to pay according to the said demand
p. 13 of file IV the Conservator of Forests, on 9th August 1938, passed orders of resale, but on 22nd August 1938, plaintiff paid Rs. 497,

p. 1 of file III. and the resale was cancelled. Plaintiff signed the agreement on 30th August 1938.

Under the agreement the remaining three instalments were due on 31st October 1938, 31st December 1938 and 31st January 1939 respectively. Plaintiff paid only Rs. 325 to-

p. 17 of file IV. wards the second instalment and was in arrears of Rs. 1,165

p. 30 of file I. on 31st January 1939. The Collector was therefore requested on 13th/14th February 1939 to recover the amount as an arrear of land revenue under sections 82 and 85 of the Indian Forest Act.

p. 39 of file IV The period of the contract expired on 30th April 1939 On 3rd July 1939, the Conservator of Forests sanctioned resale of the coupe together with the material prepared by plaintiff.

p. 46 do. On 14th July 1939, however the plaintiff paid Rs. 1,165. On
p. 47 do. 20th/22nd July 1939, the Conservator cancelled orders of resale and granted extension of period for felling up to 31st March

p. 17 of file III. 1940 and for removal up to 30th April 1940. On 31st July 1939, plaintiff signed the supplement to Agreement in respect of the said extension.

p. 109 do. Plaintiff made an application dated 18th July 1939, but which was received by the Divisional Forest Officer on 24th July 1939, stating that he had sold the fuel and timber from

p. 135 of file I. the jungle to defendant No. 2 and had executed a sale-deed on 14th July 1939 by which defendant No. 2 alone had the right over the material. Plaintiff therefore requested that the forest passes might issue in defendant No. 2's name.

p. 108 do. A similar application dated the 24th July 1939 from the defendant No. 2 was received by the Divisional Forest Officer

p. 105 do. on 25th July 1939. On 2nd/3rd August 1939, defendant No. 2 was authorised by the Divisional Forest Officer to issue transit passes for material.

p. 6 of file II. Plaintiff's application dated the 3rd February 1940 stated that Yengo Pokaji agent of defendant No. 2 had been appointed by the latter to issue passes. A similar application

p. 7 do. from defendant No. 2 dated the 5th February 1940 requested that Yengo Pokaji may be authorized till April 1940 as agent

p. 10 do. of the purchaser of material. On 22nd February 1940, an

authorisation was issued in favour of Yengo Pokaji till the end of April 1940. This was signed by defendant No. 2 against the space reserved for "signature of contractor."

On 10th May 1940, plaintiff made an application stating that the work of felling was complete but that the removal of material which was the duty of defendant No. 2 could not be done on account of cattle disease. Plaintiff therefore prayed for extension of time for removal till February 1941. p. 113 of file I.

The Conservator by order dated 4th/6th July 1940 granted the extension sought subject to payment of an additional price of Rs. 199. The payment of the additional price was however waived on further application of the plaintiff by order dated 4th October 1940. p. 115 do.

On 9th October 1940 plaintiff signed the extension clause in the agreement. pp. 118 & 19 do.

On 16th October 1940, defendant No. 2 applied for an authorization to issue passes in the name of his agent Yengo Pokaji. The authorization was approved of by the Divisional Forest Officer the same day. pp. 13 16 of file II.

On 13th December 1940, plaintiff applied to the Range Forest Officer for an authorization in the name of his agent S. P. Warty. pp. 17–18 do.

On 17th December 1940, plaintiff addressed a more detailed application to the same effect to the Divisional Forest Officer and stated that the authority given by him to defendant No. 2 was only up to April 1940 that is up to the expiry of the contract, that the extension of time which he had applied for and obtained until February 1941 was on his own account and not for the benefit of defendant No. 2, and that when after the grant of said extension he wanted to remove the material he learnt of defendant No. 2's authorization by the Department. Plaintiff further alleged in the application that the sale-deed was in the Kanarese language which he did not know and that it had been obtained fraudulently from him by defendant No. 2. p. 123 of file I.

Plaintiff appears to have had an interview with the Divisional Forest Officer after the said application, and thereafter made a second application dated the 19th December 1940. It stated that the supplement to the agreement had been executed by him and that it was hence illegal to release the material to defendant No. 2. p. 127 do.

On 22nd/24th December 1940, the Divisional Forest Officer sought an opinion from the District Government Pleader. p. 130 do.

On 4th January 1941, the latter gave his opinion that defendant No. 2 should be considered as the sole owner of the material. Plaintiff was informed accordingly by the Divisional Forest Officer on 4th/7th January 1941. p. 133 do.

On 11th January 1941, plaintiff applied to the Chief Conservator. In view of the latter's orders, dated the 27th February 1941, the Divisional Forest Officer referred the papers again to the District Government Pleader. The District Government Pleader on 12th March 1941 again gave an opinion that defendant No. 2 had become the full owner and that authorization given to him could not be cancelled. pp. 139–142 do.

Plaintiff was informed accordingly on 17th March 1941. On 31st March 1941, orders were passed to issue passes to defendant No. 2 for export of the material stacked by him at the harbour within the contract period, that is 28th February 1941. p. 170 & 173 of file.

On 8th August 1941, plaintiff gave notice of suit under section 80 of the Civil Procedure Code and filed the suit (as it appears from the copy of the plaint) on 20th February 1944. p. 181 of file I.

*Grounds of Defence.*

*Limitation.*—The suit is barred under articles 48 and 49 of the Limitation Act. These articles provide for suits for specific movable property, acquired by dishonest misappropriation or conversion or for compensation for wrongfully taking or detaining the same. The plaintiff's contention is that the material of the trees felled after February 1940 was dishonestly appropriated or converted to his own use by defendant No. 2, and plaintiff sues for damages therefor. The Government is joined as a defendant as a joint tortfeasor. For instances of articles 48 and 49 applied in similar cases (*see* Mangun Jha *v.* Dolhin) 25 Cal. 692; Aiyappa *v.* Kuppusami, 28 Mad. 208; Ramaswamy *v.* Muthusamy, 30 Mad. 12 and Pugh *v.* Ashutosh, 56 I. A. 93. The Calcutta case was one of cutting and carrying away crops. The observation of Maclean C. J. that "The crops, though immoveable in the first place, become specific movable property when severed" is in point. In 28 Mad. 208 trees on a land mortgaged to plaintiff were cut and removed by the defendant who was a co-sharer of the mortgagor. Plaintiff was held entitled to damages, the court finding that "Limitation began to run from the date when the defendant appropriated the wood to himself. In 30 Mad. 12 property belonging to plaintiff was handed over by order of a Magistrate to the defendant, the Magistrate being of opinion that it belonged to him and not to plaintiff. The Privy Council case in 56 I. A. 93 was an action for damages for conversion by the defendants of coal wrongfully gotten from the plaintiff's mines. It is clear from all these cases that articles 48 and 49 would apply to this suit also.

2. Under article 48 the time from which the period begins to run is "when the person having the right to the possession of the property first learns in whose possession it is", and under article 49 "when the property is wrongfully taken or injured or when the detainer's possession becomes unlawful". These provisions of law read with the following statements in the plaint would clearly show that February 1940 must be taken as the starting point of limitation and a suit filed in February 1944 is time-barred; "Defendant No. 2 was not entitled to cut or remove any more materials after January 1940. Yet he was found to cut unauthorisedly from February 1940 onward in spite of protest." In his letter dated 9th January 1941 (file I page 147) plaintiff has made a statement "I have begun to cut them in February and March (1940)". As against this we have the statement of the Divisional Forest Officer in his letters dated 22nd/24th December 1940 and 17th/22nd January 1941 (pages 130 and 151 of file I) that the cutting work was completed by defendant No. 2 before 31st March 1940 or 30th April 1940. Plaintiff's statement on 9th January 1941 hence is not true and he admits so in the plaint. According to the plaint, plaintiff's right to possession was asserted and denied in February 1940. Later on in the year, defendant No. 2's agent Yengo Pokaji was authorised to issue passes. From plaintiff's applications, dated 13th December 1940, 17th December 1940 and 19th December 1940, it would appear that defendant No. 2 had removed at least some material. The authorization issued in favour of defendant No. 2 was cancelled by the Conservator of Forests only on 6th/7th February 1942 (page 161 of file I). It is clear from all these facts that the felling was done unauthorizedly by defendant No. 2 in February to March 1940, that all the wood which had been cut was in the unlawful possession of defendant No. 2 after April 1940 and that a considerable portion was actually removed before the end of 1940. Plaintiff's repeated applications, which were not finally disposed of till 17th March 1941, would not by themselves prolong the period of

limitation. If the conversion took place more than three years before the suit, the suit is time-barred.

3. *Cause of action.*—It is admitted that the material was removed by defendant No. 2, but the cause of action against Government is described as being that " The first defendant acted illegally in allowing defendant No. 2 to remove plaintiff's materials ", and that " both defendants are jointly liable for the loss caused to plaintiff by their illegal acts ". That means that Government was a joint tortfeasor with defendant No. 2. Winfield defines joint tortfeasors thus : " Persons are said to be joint tortfeasors when their respective shares in the commission of the tort are done in furtherance of a common design . . . but mere similarity of design on the part of independent actors, causing independent damage is not enough ; there must be concerted action to a common end ". It is not the plaintiff's case that there was a common design or concerted action. He does not even allege malice against any officer, but according to him " the Divisional Forest Officer relying on the misrepresentation of things by defendant No. 2 allowed defendant No. 2 to remove the materials ". It should hence be contended that no action in tort lies against Government in this case and that the plaint discloses no cause of action against Government.

4. *Merits.*—Conversion is defined by Winfield as " any act in relation to the goods of a person which constitutes an unjustifiable denial of his title to them ". A person " can maintain an action if at the time of the defendant's act he had (1) ownership and possession of the goods ; or (2) possession of them ; or (3) an immediate right to possess them, but without either ownership or actual possession but in this third case he will lose his action if the defendant proves that the title to the goods is in some third party " *see* also Iyer's Law of Torts, Second edition, page 152 ff. The plaintiff in this case had no actual possession in February 1940 since even the felling was done by defendant No. 2. This case is therefore of the last kind considered by Winfield. The Government can thus contend that the title to the goods was in defendant No. 2 and that hence plaintiff has suffered no loss.

5. The correspondence before 14th July 1939 is enough to show the straightened circumstances of the plaintiff. The sale-deed of 18th July 1939 refers to them and further states " I have sold my right in the coupe to you for Rs. 2,015. Hence you are the owner of the cut and uncut material of the coupe. I will have no right on the coupe henceforth". This statement leaves no doubt that plaintiff had parted with his whole interest in the coupe. There is nothing to contradict it in any of his applications till 13th December 1940. It is true that the application for extension of period was made by plaintiff on 10th May 1940 in his own name, but that was because as the contractor he was the only person entitled to apply and in the sale-deed he had undertaken a certain responsibility of obtaining extension. It is not unlikely that the prices of timber went up enormously afterwards and that that made the plaintiff put forth the contentions contained in his letters of 17th December 1940 and 19th December 1940. In regard to those contentions it may be urged that if he had parted with his ownership in the goods by executing the sale-deed, that ownership could not be revived by obtaining an extension of time for removal and by executing an extension clause to the agreement. The extension enured for the benefit of the person to whom plaintiff had sold the goods.

65 19

Received on 28th February 1944.
Registered on 6th March 1944.
Decided on 13th February 1945.
Duration: 11 months and 16 days.

Exhibit no. 26

In the Court of the First Class Subordinate Judge,

Karwar, at Karwar.

Civil Suit No. 49 of 1944.

Pleaders.

Mr. Mujumdar and Rao Saheb Shetti.

Shamrao Vithal Gaitonde, age about 55 years, Goud Saraswat Brahmin, Forest Contractor, resident of Karwar, taluka Karwar — Plaintiff.

against

Rao Bahadur M.G. Sandavarkar, Government Pleader.

1. The Province of Bombay.

Mr.P.S.Kamat.

2. Vasudev Ramchandra Haldipurkar, age about 45 years, Goud Saraswat Brahmin, Forest Contractor of Karwar — Defendants.

Claim - Rs. 5/-.

The Plaintiff sues to have an account taken from the Defendants regarding the trees felled and materials removed out of the coupe in suit from February 1940 to the end of February 1941 and to have the amount due to the Plaintiff ascertained and paid to him alleging as follows:-

The Plaintiff who is a forect contractor purchased coupe no. 35A Block no. 2, Range Karwar for Rs. 1987/- in an auction held by the Division Forest Officer, W.D.Kanara in 1938, and passed an agreement in favour of Government regarding the purchase and commenced work also in the coupe. The work of felling the trees and removing the material was required to be completed by the end of April 1940. As the Plaintiff was ill he sold to Defendant No. 2 certain materials out of the coupe that would be out by about the end of 1939. Accordingly Defendant No. 2 was given delivery

*O.P.2. of 862 tons of fuel and 158¾ Khandis of logs of wood in January 1940 for measurement for which a receipt was passed

by Defendant No. 2 who paid the Plaintiff Rs. 2300/- as price of the material sold to him. According to the terms of the agreement, Defendant No. 2 was entitled to only this much and not to anything more out of the coupe. He was not entitled to cut or remove any trees or materials after January 1940. He removed the materials sold to him by June 1940 and he was found to be cutting unauthorisedly trees from the coupe from 1940 onwards inspite of protests from the Plaintiff. The Plaintiff who was the owner of these trees was unable to remove them within the stipulated time owing to the prevalence of cattle disease; he therefore got the period for removal of his materials extended upto the end of February 1941. Even though such was the state of facts Defendant No. 2 began to cut and remove the materials in February 1940 and onwards. The Plaintiff applied to the Divisional Forest Officer not to allow the Defendant No. 2 to do so; but that officer being misled by Defendant No. 2 allowed him to cut and remove the materials on the ground that they belonged to him under the agreement of sale. Defendant No. 2 therefore removed the materials really belonging to the Plaintiff till February 1941. Both he and the Forest Department acted illegally and contrary to the agreement of sale and caused loss to the Plaintiff. Notice under section 80 of the Civil Procedure Code dated 6th August 1941 was given to Defendant No. 1 regarding all this, but with no effect. Defendant No. 2 was also called upon to make good the loss caused by him to the Plaintiff; but nothing has been done so far. Both the Defendants therefore are jointly liable for the loss caused to the Plaintiff. The Forest Department and Defendant No. 2 are in possession of the necessary accounts and they have not given any details to the Plaintiff till now. The Plaintiff therefore had to come to court with the present suit.

Both the Defendants denying the Plaintiff's claim in

-67 21

toto by their written statements exhibits nos. 17 and 18 take a preliminary point of objection regarding the maintainibility of the suit contending that the suit is not maintainable for want of proper notice under section 80 of the Civil Procedure Code. It is also further * contended that necessary court fees are not paid.

*O.P.3.

The following preliminary issues have been raised and heard.

Preliminary issues.

1) Whether notice under section 80 of the Civil Procedure Code was given ? If so, whether it is proper and -- sufficient ?
2) Whether the suit for accounts is tenable
3) If not, what should be the valuation for court fees ?

Findings.

My findiugs are :- (1) No; no.. (2) and (3) Not necessary.

R e a s o n s.

This is a suit bragght by the Plaintiff against the Province of Sombay and Defendant No. 2 with regard to an agreement of sale entered into by him with Defendant No.2 regarding materials from coupe no. 35A Block No. 2, Range Karwar, purchased by the Plaintiff in 1938 in the auction held by the Divisional Forest Officer, W.D.,Kanara. The Plaintiff complains of wrongful acts alleged to have been committed both by the Forest Department and Defendant No.2 and he claims accounts from both of them alleging that he has been put to a loss by reason of their wrongful acts. A preliminary objection is taken to this suit that there has been no proper and valid notice given under section 80 of the Civil Procedure Code and that therefore the suit mu fail. It is to be noted that it is stated in the plaint that notice under section 80 of the Civil Procedure Code dated 8th August 1941 has been given. The copy of that --

notice, the original of which also is produced is exhibit no. 24. Section 80 lays down:- "No suit shall be instituted against the Crown, or against a Public Officer in respect of any act purporting to be done by such Public Officer in his official capacity, until the expiration of two months next after notice in writing has been (delivered to or left at the office of - in the case of a suit against a Provincial Government, a Secretary to that Government or the Collector of the District) stating the cause of action, the name, description and place of residence of the Plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left". As laid down in Jhagchand v.* Secretary of *O.P.4. State, I.L.R. 51 Bombay page 725, section 80 is express, explicit and mandatory and it admits of no implications or exceptions and the provisions of that section contain a clear and unqualified prohibition upon the institution of suit without the statutory notice. It is to be seen now whether the notice given in this case fully and strictly complies with the terms of section 80. It is argued first that the notice has been given to a wrong person and secondly that the relief mentioned in it is different from the relief claimed now in the plaint.

Taking up the first point of objection for consideration it is to be seen whether the notice is properly addressed to a proper person as required by the provisions of the section under discussion. The notice is addressed to the Secretary of State for India in Council, and it is clearly not properly addressed because according to the clause 'C' of section 80 quoted above, the notice has to be addressed if the suit is against a Provincial Government to a Secretary to that Government or the Collector of the district. The notice in this case is neither addressed to the Secretary, to the --

Government of Bombay or the Collector of the District. There is thus a clear though technical non-compliance with the terms contained in section 80 clause (c). It is said that there has been substantial compliance with the provisions of section 80 inasmuch as the notice was given to the Collector. Whether the notice was personally presented to the Collector or left at his office, it cannot be said for certain. This much is true that the notice was received by the Collector. But that fact in itself cannot be sufficient to prove the validity of the notice. If a wrongly addressed notice is left at the Collector's office, it is in the usual and ordinary course of office work received and a reply given to it as in the present case. Such a routine course of conduct on the part of the office staff cannot indeed render such an irregular and improperly addressed notice, legal and valid. Care should have been taken by the Plaintiff to see that the contents of the notice and its address were strictly in conformity with the mandatory provisions of section 80. It is not enough to say that in substance * the present notice is as required by section 80 even though not properly addressed because it has been given to the Collector, who has taken notice of it and given a reply too. I have already said that the giving of a reply is immaterial. It is said that the purpose of section 80 is served if the matter contains in the notice is brought to the notice of the Government whether particular formality is gone through or not. I entirely differ from this view. As seen already section 80 must be strictly followed and if there is any departure from its terms, however trifling, technical, formal and unimportant to look at the notice must be considered to be improper and invalid. In Gangaram Rupchand and Co., v. Secretary of State, A.I.R. 1937 Sind page 291, a notice

*O.P.5.

under section 80 Civil Procedure Code. was sent to the Chief Engineer Lloyd Barage and Canals Constructions, Karachi and the Collector of Sukker and this was stated in the -- plaint. It was held that the averment in the plaint was not in compliance with section 80 as the words "delivered" or "left" were not used as provided by section 80 and the case quoted by me was strictly relied on. Here in the present case the words 'delivered' or 'left' are not at all used in the plaint. What is stated as seen before in the plaint is "notice dated 8th August 1941 as required under section 80 Civil Procedure Code was given to Defendant No. 1 regarding this matter but with no effect." This averment would be evidently not in accordance with section 80 according to the ruling just now referred to. If that is so, the notice given would not be valid with the result that the suit shall have to be taken to have been brought without giving a legal and valid notice.

I now come to the second point. In the notice it is -- clearly stated: "Divisional Forest Officer, W.D.Kanara having ignored the protests of my client illegally allowed Mr. Haldipur to remove wood from the said coupe from November 1940 onwards and put my client to a very heavy loss of Rs. 6450/-. Under these circumstances my client has instructed me to request you to be kind enough to make good the loss caused to my client on account of the illegal act of the Divisional Forest Officer, * W.D. Kanara. Please note that if you fail *O.P.C. to comply with the request of my client will have no other alternative but to file a suit in a proper court against -- Government for recovery of the amount after the expiry of 2 months from the date of receipt of this notice". In the plaint merely an account is claimed. It is evident that the present relief for an account is different to the relief claiming definitely a definite sum of Rs. 6450/-. It is --

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argued that the difference noticeable between the two reliefs is a sheer technicality and that therefore very immaterial. And in support of this reliance is placed on the decision in Mohammad Zia v. United Provinces, A.I.R. 1943 Allahabad pages 345, 346. In that case in the draft plaint attached to the notice under section 80 the valuation of the suit was given as Rs. 10,500/- whereas in the plaint as presented in court, the valuation appeared as -- Rs. 60,000/-. In the notice there were two reliefs, one for damages and the other for a declaration whereas in the plaint the only relief prayed for was that of declaration. It was held that the defects were sheer technicality, which could not operate to defeat the suit because section 80 did not require that the valuation of the suit shall be stated and the Defendant had been in no way prejudiced by the fact of one of the two reliefs being subsequently dropped. The facts in that case were altogether different from the facts in the present case. It is said that there was higher relief claimed in the notice in the present case while a smaller relief by way of claiming an account has been made in the plaint and that therefore no objection can be taken on the score of difference between the two reliefs. It is further submitted that the material facts as stated in the plaint have been stated also in the notice, that it is only on examining and making the account, that the amount due to the Plaintiff can be ascertained and that therefore the relief now claimed should not be considered as a separate and different relief. It is true that the accounts have got to be examined and scrutinised for ascertaining the amount that would be due to the Plaintiff if his case is assumed to be true. But at the date of the notice * the Plaintiff himself was sure as to the amount due to him. Not that he has approximately stated a certain amount; but he

*O.P.7.

has mentioned in the notice a definite amount. In these circumstances, how can it be said that his present relief -- merely for account is not different from the relief he mentioned in his notice ? To me it appears that the two reliefs are quite different to each other. If that is so, the notice shall have to be considered to be not proper as it does not contain the relief now claimed in the plaint. The Plaintiff's pleader Rao Saheb Shetti refers me again in support of his contention to the decisions in Secretary of State v. Chimanlal Jamnadas 44 Bombay Law Reporter page 295 and Chandulal v. Government of Bombay, 45 Bombay Law Reporter page 197. In the first case it has been held that a notice of suit given under section 80 of the Civil Procedure Code 1908 which is otherwise proper is not rendered ineffective merely because the surname, the case, or the occupation of the proposed Plaintiff is not mentioned. It is sufficient if the Plaintiff is described in such a manner that he could be easily identified, e.g. by mentioning his father's name and place of residence. This case has evidently no application to the facts of the present case. There is no question of insufficient description or identity of any of the parties. It is altogether a case of different and separate persons as seen before. In the second case, the acts committed by the Collector were given notice of and it was held that there was sufficient compliance with -- section 80. In the present case there is nothing of that sort. No doubt the alleged illegal act by the Divisional Forest Officer is stated both in the notice and the plaint; but it is not on that ground that the notice is now -- challenged. It is on different grounds which have been discussed before. To my mind therefore the two rulings relied on by Rao Saheb Shetti cannot be of any avail to him.

It seems to me, therefore, on considering carefully

the facts in this case and the law bearing on them that there has been no compliance strictly with section 80 and that therefore the notice relied upon by the Plaintiff is invalid and illegal. In that case as stated some time ago it shall * have to be held that the suit has been brought without a notice. *C.P.8.

That being so, the suit must fail not only as against Defendant No. 1 but as against Defendant No. 2 also. I am supported in this view by the decision in Noor Mohamad v. Abdul Fateh A.I.R. 1941 Patna page 461, where it has been held: "The bar of section 80 applies to the suit as a whole and not merely to the claim against the -- Defendant public servants. The suit in contravention of the provisions of section 80 is unsustainable in limine".

O r d e r.

The Plaintiff's suit is dismissed with costs. The Plaintiff to pay Defendants' costs in separate sets.

13th February 1945. Signed. H. P. Suryavanshi.
First Class Subordinate Judge.

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Copied by " T R U E C O P Y "

Compared by

Clerk of the Court,
F. C. Court Karwar, Kanara.

Decree in original suit
(O.20 rr.6,7)

Exh. 27.

Decree.

In the Court of First Class Sub Judge, Karwar.
O.S. No. 49 of 1944.

Shamrao Vithal Gaitonde, age about 55 years Goud Saraswat Brahmin Forest contractor, resident of Karwar, Taluka Karwar.... Plaintiff.

Vs.

1. The Province of Bombay.
2. Vasudev Ramchandra Haldipurkar, age about 45 years Goud Saraswat Brahmin, Forest contractor of Karwar. Defendants.

Claim Rs. 5/-

The above named plaintiff states as follows:-

(1) Plaintiff is a Forest contractor. In the auction held by the Divisional Forest Officer, W.D.Kanara, in 1938, Plaintiff purchased the coupe No. 35A, Block No. 2, Range Karwar, for Rs. 1987. He passed an agreement in favour of Government about this contract and commenced the work in the coupe. The work of felling and removal of the materials was required to be completed by the end of April 1940. Owing to his illness etc, plaintiff agreed to sell to defendant no.2 certain materials out of the coupe that would be cut by about the en of 1939. Accordingly, defendant no. 2 was given delivery of 862 tons of fuel and 158¾ khandies of logs in January 1940 after measurement for which a receipt was passed by him. Plaintiff has received from defendant no. 2 Rs. 2,300/- the value of the materials sold to him. Under the terms of the agreement of sale, defendant no. 2 was not entitled to any more trees or materials from the coupe. Plaintiff was the sole owner of these materials and he alone was entitled to remove them. Defendant no. 2 removed the materials sold to him by plaintiff by June, 1940. He was not entitled to cut or remove any more materials after January, 1940. Yet he was found to cut unauthorisedly trees from the said coupe from February 1940 onward in spite of protest from plaintiff. As these trees belonged to plaintiff, he was entitled to remove them. Plaintiff however being unable to remov them within the stipulated time owing to the prevallance of cattle disease, he got the period for removal of his materials extended upt end of February 1941. According to this extension plaintiff alone was entitled to remove the materials but in February, 1940 and onwards. As defendant no. 2, however, began to remove these materials plaintiff applied to the Divisional Forest Officer. ~~after explaining the facts fully, not to allow defendant no. 2 remove the materials~~

plaintiff applied to the Divisional Forest Officer. After explaining the facts fully, not to allow defendant no. 2 remove the materials and not to issue passes to him for removal. Nevertheless, the Divisional Forest Officer relying on the misrepresentation of things by defendant no. 2 allowed defendant no. 2 to remove the materials on the ground that they belonged to defendant no. 2 in view of the agreement of sale. Defendant no. 2 relying on the passes wrongly issued by the Forest Department continued the removal of the plaintiff's materials from the coupe till February 1941. The Forest Department thus acted illegally in allowing defendant no. 2 to remove plaintiff's materials. Defendant no. 2 also acted illegally and contrary to the terms of the agreement of sale in so felling and removing the materials belong to plaintiff. He has no right to any materials that were cut in February 1940 and onwards- Thus both the Forest Department and defendant no. 2 have caused loss to the plaintiff by their illegal acts. Notice dated 8th August 1941 as required under section 80 Civil Procedure Code was given to defendant no. 1 regarding this matter but without no effect. Defendant no. 2 also was asked to make good the loss caused by him but he has not yet done anything. Hence, both defendants are jointly liable for the loss caused to plaintiff by their illegal acts. The Forest Department and defendant no. 2 are in possession of accounts regarding the removal of the materials belonging to the plaintiff. They have not, as yet, supplied the plaintiff with the details of the account. Hence plaintiff is entitled to claim account of the loss from both the defendants. Hence this suit for account.

It is therefore prayed that a decree be passed in favour of the plaintiff for the following reliefs.

(a) The defendants may be ordered to render true and correct account of the trees felled and materials removed out of the coupe from February 1940 to end of February 1941 and the amount found due may be ordered to be paid to the plaintiff from the defendants or such of them as may be found liable for the loss.

This suit coming on this day for final disposal before H.P. Suryawanshi, Esquire, LL.B., F.C.Sub Judge, Karwar in the presence of Rao Saheb Shetti and Mr. Muzumdar pleaders for plaintiff and Mr. P.S.Kamat pleader for defendant no. 2 and Rao Bahadur Chandavarkar pleader for defendant no. 1, it is hereby decreed as follows:-

The plaintiff's suit is dismissed with costs. The plaintiff to pay Defendant's costs in separate sets.

Bill of costs.

Bill of costs.

Plaintiff.

| | | |
|---|---|---|
| Stamp on Exh. 1. | 0-8-0 | |
| Stamp for process ( Ex. no. 1). | 4-0-0 | |
| Vakilpatra Ex. 3. | 0-10-0 | |
| Pleader's fee. | 15-0-0 | |
| | Rs. 20-2-0 | |

Defendant no. 2.

| | | |
|---|---|---|
| Ex. 8. | .... | 0-10-0 |
| Pleader's fee. | | 15-0-0 |
| | | Rs. 15-10-0 |

cost of stamps on Exhs.10, 12,14, 16, 19, 22 disallowed.

Defendant no. 1.

| | |
|---|---|
| Pleader's fee. | 15-0-0 |
| | Rs. 15-0-0 |

Cost of stamps on Exhs. 7,11, 13, 15 disallowed.

Given under my hand and the seal of this court this 13th day of February 1945.

Sd. S. P. Naik. Karkun.

Sd. H. P. Suryawanshi, F.C.Sub Judge, Karwar.
5th March 1945.

Plaintiff's pleader

Defendant no. 1's pleader - Sd. M. G. Chand[redacted]

Defendant no. 2's pleader.

Suits:
Karwar.
For account and damages.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 3445
Bombay Castle, ~~April~~ 2nd May 1945.

Read Government Resolution, Legal Department, No.6119, dated the 1st September 1944.

Endorsement by the District Government Pleader, Kanara, No.47, dated the 15th February, 1945, forwarding a copy of his letter No.46, dated the 15th February 1945 addressed to the Divisional Forest Officer W. Division Kanara, stating that the suit noted in the margin was decided by the First Class Sub-Judge, Karwar, on the 13th February 1945, when the following order was passed:-

In the Court of the First Class Sub-Judge at Karwar.
Civil Suit No. 49 of 1944.

Shankao Vithal Gaitonde .. .. Plaintiff;

versus

The Province of Bombay and V.R. Haldipur .. .. .. Defendants.

Claim - Rs. 5/-

"The Plaintiff's suit is dismissed with costs. The Plaintiff to pay Defendants' costs in separate sets."

Endorsement by the District Government Pleader, Kanara, - No.102, dated the 16/17th April 1945, forwarding a copy of his letter No.101 dated the 16-17th April 1945 addressed to the - Divisional Forest Officer, W. Division Kanara and forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,
P.N. MOOS,
for { Secretary to Government.

Original

To
The Revenue Department.
The Commissioner, S.D.
The Chief Conservator of Forests, Province of Bombay.
The Conservator of Forests, Southern Circle.
The Divisional Forest Officer, W.D. Kanara.

Issued 2/5

Submitted for approval and signature

8/45

Received on 28th February 1944.
Registered on 6th March 1944.
Decided on 13th February 1945.
Duration: 11 months and 16 days.

Exhibit no. 26

In the Court of the First Class Subordinate Judge,

Karwar, at Karwar.

Civil Suit No. 49 of 1944.

Pleaders.

Mr. Mujumdar and Rao Saheb Shetti.

Shamrao Vithal Gaitonde, age about 55 years, Goud Saraswat Brahmin, Forest Contractor, resident of Karwar, taluka Karwar . . . . . Plaintiff.

against

Rao Bahadur M.G. Chandavarkar, Government Pleader.

1. The Province of Bombay.

Mr.P.S.Kamat.

2. Vasudev Ramchandra Haldipurkar, age about 45 years, Goud Saraswat Brahmin, Forest Contractor of Karwar . . . . . Defendants.

Claim - Rs. 5/-.

The Plaintiff sues to have an account taken from the Defendants regarding the trees felled and materials removed out of the coupe in suit from February 1940 to the end of February 1941 and to have the amount due to the Plaintiff ascertained and paid to him alleging as follows:-

The Plaintiff who is a forest contractor purchased coupe no. 35A Block no. 2, Range Karwar for Rs. 1987/- in an auction held by the Divisional Forest Officer, W.D.Kanara in 1938, and passed an agreement in favour of Government regarding the purchase and commenced work also in the coupe The work of felling the trees and removing the material was required to be completed by the end of April 1940. As the Plaintiff was ill he sold to Defendant No. 2 certain materials out of the coupe that would be cut by about the end of 1939. Accordingly Defendant No. 2 was given delivery

*O.P.2.

of 862 tons of fuel and 158¾ khandis of logs of wood in January 1940 for measurement for which a receipt was passed

by Defendant No. 2 who paid the Plaintiff Rs. 2300/- as price of the material sold to him. According to the terms of the agreement, Defendant No. 2 was entitled to only this much and not to anything more out of the coupe. He was not entitled to cut or remove any trees or materials after January 1940. He removed the materials sold to him by June 1940 and he was found to be cutting unauthorisedly trees from the coupe from 1940 onwards inspite of protests from the Plaintiff. The Plaintiff who was the owner of these trees was unable to remove them within the stipulated time owing to the prevalence of cattle disease; he therefore got the period for removal of his materials extended upto the end of February 1941. Even though such was the state of facts Defendant No. 2 began to cut and remove the materials in February 1940 and onwards. The Plaintiff applied to the Divisional Forest Officer not to allow the Defendant No. 2 to do so; but that officer being misled by Defendant No. 2 allowed him to cut and remove the materials on the ground that they belonged to him under the agreement of sale. Defendant No. 2 therefore removed the materials belonging really to the Plaintiff till February 1941. Both he and the Forest Department acted illegally and contrary to the agreement of sale and caused loss to the Plaintiff. Notice under section 80 of the Civil Procedure Code dated 8th August 1941 was given to Defendant No. 1 regarding all this, but with no effect. Defendant No. 2 was also called upon to make good the loss caused by him to the Plaintiff; but nothing has been done so far. Both the Defendants therefore are jointly liable for the loss caused to the Plaintiff. The Forest Department and Defendant No. 2 are in possession of the necessary accounts and they have not given any details to the Plaintiff till now. The Plaintiff therefore had to come to court with the present suit.

Both the Defendants denying the Plaintiff's claim in

toto by their written statements exhibits nos. 17 and 18 take a preliminary point of objection regarding the maintainibility of the suit contending that the suit is not maintainable for want of proper notice under section 80 of the Civil Procedure Code. It is also further * contended tha necessary court fees are not paid.

*O.P.3.

The following preliminary issues have been raised and heard.

Preliminary issues.

1) Whether notice under section 80 of the Civil Procedure Code was given ? If so, whether it is proper and -- sufficient ?

2) Whether the suit for accounts is tenable ?

3) If not, what should be the valuation for court fees ?

Findings.

My findings are :- (1) No; no.. (2) and (3) Not necessary.

Reasons.

This is a suit brought by the Plaintiff against the Province of Bombay and Defendant No. 2 with regard to an agreement of sale entered into by him with Defendant No.2 regarding materials from coupe no. 35A Block No. 2, Range Karwar, purchased by the Plaintiff in 1938 in the auction held by the Divisional Forest Officer, W.D.,Kanara. The Plaintiff complains of wrongful acts alleged to have been committed both by the Forest Department and Defendant No.2 and he claims accounts from both of them alleging that he has been put to a loss by reason of their wrongful acts. A preliminary objection is taken to this suit that there has been no proper and valid notice given under section 80 of the Civil Procedure Code and that therefore the suit mus fail. It is to be noted that it is stated in the plaint that notice under section 80 of the Civil Procedure Code dated 8th August 1941 has been given. The copy of that --

notice, the original of which also is produced is exhibit no. 24. Section 80 lays down:- "No suit shall be instituted against the Crown, or against a Public Officer in respect of any act purporting to be done by such Public Office in his official capacity, until the expiration of two month next after notice in writing has been (delivered to or left at the office of - in the case of a suit against a Provincial Government, a Secretary to that Government or the Collector of the District) stating the cause of action, the name, description and place of residence of the Plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left". As laid down in Bhagchand v.* Secretary of State, I.L.R. 51 Bombay page 725, section 80 is express, explicit and mandatory and it admits of no implications or exceptions and the provisions of that section contain a clear and unqualified prohibition upon the institution of suit without the statutory notice. It is to be seen now whether the notice given in this case fully and strictly complies with the terms of section 80. It is argued first that the notice has been given to a wrong person and secondly that the relief mentioned in it is different from the relief claimed now in the plaint.

*O.P.4.

Taking up the first point of objection for consideration it is to be seen whether the notice is properly addressed to a proper person as required by the provisions of the section under discussion. The notice is addressed to the Secretary of State for India in Council, and it is clearly not properly addressed because according to the clause 'C' of section 80 quoted above, the notice has to be addressed if the suit is against a Provincial Government to a Secretary to that -- Government or the Collector of the district. The notice in this case is neither addressed to the Secretary, to the --

Government of Bombay or the Collector of the District. There is thus a clear though technical non-compliance with the term contained in section 80 clause (c). It is said that there has been substantial compliance with the provisions of section 80 inasmuch as the notice was given to the Collector. Whether the notice was personally presented to the Collector or left at his office, it cannot be said for certain. This much is true that the notice was received by the Collector. But that fact in itself cannot be sufficient to prove the validity of the notice. If a wrongly addressed notice is left at the Collector's office, it is in the usual and ordinary course of office work received and a reply given to it as in the present case. Such a routine course of conduct on the part of the office staff cannot indeed render such an irregular and improperly addressed notice, legal and valid. Care should have been taken by the Plaintiff to see that the contents of the notice and its address were strictly in conformity with the mandatory provisions of section 80. It is not enough to say that in substance * the present notice is as required by section 80 even though not properly addressed because it has been given to the Collector, who has taken notice of it and given a reply too. I have already said that the giving of a reply is immaterial. It is said that the purpose of section 80 is served if the matter containe in the notice is brought to the notice of the Government whether particular formality is gone through or not. I entirely differ from this view. As seen already section 80 must be strictly followed and if there is any departure from its terms, however trifling, technical, formal and unimportant to look at the notice must be considered to be improper and invalid. In Gangaram Rupchand and Co., v. Secretary of State, A.I.R. 1937 Sind page 291, a notice

*O.P.5.

under section 80 Civil Procedure Code, was sent to the Chief Engineer Lloyd Barage and Canals constructions, Karachi and the Collector of Sukker and this was stated in the -- plaint. It was held that the averment in the plaint was not in compliance with section 80 as the words "delivered" or "left" were not used as provided by section 80 and the case quoted by me was strictly relied on. Here in the present case the words 'delivered' or 'left' are not at all used in the plaint. What is stated as seen before in the plaint is "notice dated 8th August 1941 as required under section 80 Civil Procedure Code was given to Defendant No. 1 regarding this matter but with no effect." This averment would be evidently not in accordance with section 80 according to the ruling just now referred to. If that is so, the notice given would not be valid with the result that the suit shall have to be taken to have been brought without giving a legal and valid notice.

I now come to the second point. In the notice it is -- clearly stated: "Divisional Forest Officer, W.D.Kanara having ignored the protests of my client illegally allowed Mr. Haldipur to remove wood from the said coupe from November 1940 onwards and put my client to a very heavy loss of Rs. 6450/-. Under these circumstances my client has instructed me to request you to be kind enough to make good the loss caused to my client on account of the illegal act of the Divisional Forest Officer, * W.D. Kanara. Please note that if you fail to comply with the request of my client will have no other alternative but to file a suit in a proper court against -- Government for recovery of the amount after the expiry of 2 months from the date of receipt of this notice". In the plaint merely an account is claimed. It is evident that the present relief for an account is different to the relief claiming definitely a definite sum of Rs. 6450/-. It is --

*O.P.6.

89 F 35 JH

argued that the difference noticeable between the two reliefs is a sheer technicality and that therefore very immaterial. And in support of this reliance is placed on the decision in Mohammad Zia v. United Provinces, A.I.R. 1943 Allahabad pages 345, 346. In that case in the draft plaint attached to the notice under section 80 the valuation of the suit was given as Rs. 10,500/- whereas in the plaint as presented in court, the valuation appeared as -- Rs. 60,000/-. In the notice there were two reliefs, one for damages and the other for a declaration whereas in the plaint the only relief prayed for was that of declaration. It was held that the defects were sheer technicality, which could not operate to defeat the suit because section 80 did not require that the valuation of the suit shall be stated and the Defendant had been in no way prejudiced by the fact of one of the two reliefs being subsequently dropped. The facts in that case were altogether different from the facts in the present case. It is said that there was higher relief claimed in the notice in the present case while a smaller relief by way of claiming an account has been made in the plaint and that therefore no objection can be taken on the score of difference between the two reliefs. It is further submitted that the material facts as stated in the plaint have been stated also in the notice, that it is only on examining and making the account, that the amount due to the Plaintiff can be ascertained and that therefore the relief now claimed should not be considered as a separate and different relief. It is true that the accounts have got to be examined and scrutinised for ascertaining the amount that would be due to the Plaintiff if his case is assumed to be true. But at the date of the notice * the Plaintiff himself was sure as to the amount due to him. Not that he has approximately stated a certain amount; but he

*O.P.7.

has mentinned in the notice a definite amount. In these circumstances, how can it be said that his present relief -- merely for account is not different from the relief he mentioned in his notice ? To me it appears that the two reliefs are quite different to each other. If that is so, the notice shall have to be considered to be not proper as it does not contain the relief now claimed in the plaint. The Plaintiff's pleader Rao Saheb Shetti refers me again in support of his contention to the decisions in Secretary of State v. Chimanlal Jamnadas 44 Bombay Law Reporter page 295 and Chandulal v. Government of Bombay, 45 Bombay Law Reporter page 197. In the first case it has been held that a notice of suit given under section 80 of the Civil Procedure Code 1908 which is otherwise proper is not rendered ineffective merely because the surname, the case, or the occupation of the proposed Plaintiff is not mentioned. It is sufficient if the Plaintiff is described in such a manner that he could be easily identified, e.g. by mentioning his father's name and place of residence. This case has evidently no application to the facts of the present case. There is no question of insufficient description or identity of any of the parties. It is altogether a case of different and separate persons as seen before. In the second case, the acts committed by the Collector were given notice of and it was held that there was sufficient compliance with -- section 80. In the present case there is nothing of that sort. No doubt the alleged illegal act by the Divisional Forest Officer is stated both in the notice and the plaint; but it is not on that ground that the notice is now -- challenged. It is on different grounds which have been discussed before. To my mind therefore the two rulings relied on by Rao Saheb Shetti cannot be of any avail to him.

It seems to me, therefore, on sonsidering carefully

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the facts in this case and the law bearing on them that there has been no compliance strictly with section 80 and that therefore the notice relied upon by the Plaintiff is invalid and illegal. In that case as stated some time ago it shall * have to be held that the suit has been brought without a notice.

*O.P.8.

That being so, the suit must fail not only as against Defendant No. 1 but as against Defendant No. 2 also. I am supported in this view by the decision in Noor Mohamad v. Abdul Fateh A.I.R. 1941 Patna page 461, where it has been held: "The bar of section 80 applies to the suit as a whole and not merely to the claim against the -- Defendant public servants. The suit in contravention of the provisions of section 80 is unsustainable in limine"

O r d e r.

The Plaintiff's suit is dismissed with costs. The Plaintiff to pay Defendants' costs in separate sets.

13th February 1945. Signed. H. P. Suryavanshi.
First Class Subordinate Judg

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Copied by
Phalifpkarvk
Compared by
orig Amalk
Copy: Phalifpkarvk

"TRUE COPY"

13.3.45
Clerk of the Court,
F. C. Court Karwar, Kanara.

Application received on 2nd March 1945
copy ready on 13th March 1945.
copy delivered on 5th April 1945

Clerk of the court.

45
97

A Suits.
Karwar.
For account and damages. A

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 5340
Bombay Castle, 19th July 1945.

Read Government Resolution, Legal Department, No.3445 dated the 2nd May 1945.

Endorsement
Letter from the Conservator of Forests, Southern Circle, No.28/11/10 of 1945-46 dated the 25th June 1945 forwarding a copy of the letter from the Divisional Forest Officer, Western Division, Kanara No.G/14 1999 of 1945-46, dated the 18th June 1945, and stating that the plaintiff in suit noted in the margin has now preferred an appeal No.67 of 1945 in the Court of the District Judge, Kanara, against the decision of the First Class Subordinate Judge, Karwar, dated the 13th February 1945 and requesting sanction to its defence.

B In the Court of the First Class Sub-Judge at Karwar.
Civil Suit No.49 of 1944.

Sharmao Vithal Gaitonde ... Plaintiff;
versus
The Province of Bombay and V.R. Haldipur. ... ... Defendants.

Claim - Rs.5/- B

Endorsement by the Chief Conservator of Forests, Bombay Province No.34/1282 dated the 27th June 1945, forwarding the above.

Endorsement by the Commissioner, Southern Division No.L.S.T.-310 dated the 2nd July 1945 forwarding the above with his concurrence.

RESOLUTION.- Sanction is accorded to the defence of the Civil Appeal No.67 of 1945 in the Court of the District Judge, Kanara on the lines of the brief accompanying Government Resolution, Legal Department No.6119 dated the 1st September 1944 and the favourable grounds contained in the judgment of the First Class Subordinate Judge, Karwar dated the 13th February 1945.

By order of the Governor of Bombay,

Issued
KP
19/7

o/c
for ( P. N. Moos,
(Secretary to Government.

To
The Revenue Department.
The Commissioner, Southern Division.
The Chief Conservator of Forests, Province of Bombay.
The Conservator of Forests, Southern Circle.
The Divisional Forest Officer, Western Division, Kanara.
The District Government Pleader, Karwar.

Submitted for signature.
KP 18/7
P.A.

A.S.

Received on 12th April 1945.
Registered on 17th April 1945.
Decided on 1st July 1946.
Duration 1 year, 2 months & 18 days.

Exhibit no. 8.

In the District Court of Kanara,

At Karwar.

Appeal no. 67 of 1945 from Decree in

Civil Sui 49 of 1944 of the Court of the Civil Judge,

(Senior Division) Mr. H.P.Suryavanshi of Karwar.

Pleaders.

Rao Saheb Shetti. Shamrao Vithal Gaitonde, Goud Saraswat Brahmin, and holder of Karwar, Taluka Karwar.... Appellant (Original Plaintiff)

Against.

Rao Bahadur Chandavarkar. 1. The Province of Bombay.

Mr.P.S.Kamat 2. Vasudev Ramchandra Haldipurkar, Forest Contractor of Karwar, Taluka Karwar. ... Respondents (Original Defendants.)

Claim Rs. 5/-.

The action giving rise to the present appeal was instituted by the Plaintiff-appellant for taking accounts from the Defendants in respect of trees felled and materials removed out of his coupe from February 1940 to the end of February 1941 and the amount found due to be ordered to be paid to him from such of the Defendants as has been found to be liable for loss.

*o.p.2 * 2. It was alleged by the Plaintiff that he was a Forest contractor and, as such, he had purphased the coupe No. 35A Block No. II Range Karwar for Rs. 1987/- in 1938 in the auction held by the Divisional Forest Officer, W.D. Kanara. He further alleged that he had sold certain materials out of the said coupe to the Defendant no. 2 to cut them by the end of 1939, that the Defendant no. 2 felled unauthorisedly trees from the coupe from 1940 onwards in spite of his protest and that the Defendant no. 1 - ignored his protest.

3. Both the Defendants denied the Plaintiff's claim and raised a preliminary objection among various other contentions.

Their main contention was that the suit was not tenable for want a proper notice under section 80 of the Civil Procedure Code.

4. The lower court held that the notice given by the Plaintiff was invalid and hence the Plaintiff was nonsuited.

5. Being dissatisfied with the result of the suit, the Plaintiff has now come in appeal.

6. The main preliminary point which was at issue in the trial court was urged in the appeal.

Whether the notice given under section 80 of the Civil Procedure Code is improper and invalid?

7. I answer the point in the affirmative.

Reasons.

8. The material facts of the case were briefly these. The Defendant no. 1 is the Province of Bombay; while the Defendant no.2 is Mr. V.R.Haldipurkar a forest contractor of Karwar. The Plaintiff -appellant also is a forest contractor at Karwar. In 1938 he had purchased coupe No. 35A Block II Range Karwar for Rs. 1987/- in an auction held by the Divisional Forest Officer W.D.Kanara after passing an agreement in favour of the Government. According to the - terms of the agreement of the Plaintiff was required to fell the trees and remove the materials by the end of April 1940. It appears that the Plaintiff could not fulfil the terms of the contract during the stipulated period and hence he sold to the Defendant no. 2 certain materials out of the coupe to be cut by the end of 1939. So - far the facts were not * in dispute. * p.p.3

9. It was alleged by the Plaintiff that the Defendant no. 2 unauthorisedly commenced to cut trees from the said coupe from February 1940 till February 1941 in spite of his protest, that the Defendant no. 1 ignored his protest, that on account of their wrongful acts he had sustained a heavy loss and that accounts may be taken from them.

10. The Defendants raised a preliminary plea of want of proper notice under section 80 of the Civil Procedure Code. The lower court accepted their contention and found against the Plaintiff. This finding of the lower court was challenged for the Appellant.

11. It was urged on behalf of the Appellant that the notice in question was properly delivered, that it was immaterial to whom it should be addressed, that the wrong address of the notice was a mere technical defect, that the lower court ought to have construed it with some regard to commonsense and hence its decision was erroneous. On the contrary, the learned District Government Pleader and the pleader for the respondent no. 2 argued in support of the finding of the lower court urging that the notice of the suit was not against the Provincial Government as required under section 80(c) of Civil Procedure Code, but it was intended to be against the Secretary of State for India as contemplated under section 80(d) of the Civil Procedure Code.

12. Now, exhibit no. 24 dated August 8, 1941 is the notice in question. It is addressed to the Secretary of State for India in Council. However, it is common ground that it was received by the Collector of Kanara. Exhibit no. 25 is the reply dated August 17, 1941 given by the Collector of Kanara acknowledging receipt of the said notice. Now, in the present suit the Province of Bombay has been impleaded as the Defendant no. 1. That being so, the notice ought to have been addressed to a Secretary to that Government or the Collector of the District as required under section 80(c) of the Civil Procedure Code. The notice in question is not addressed either to a Secretary to the Provincial Government or the Collector of the District. But, it has been addressed to the Secretary of State for India in Council. Further in the last para of the notice the Secretary of State for India is called upon to make good the loss caused to the Plaintiff on account of the illegal acts of the Divisional Forest Officer. Now, nowhere in the notice it is mentioned that the Plaintiff has instituted his suit against the Province of Bombay. Further, the notice is addressed to the Secretary of State for India in Council is one as contemplated under section 80(d) of the Civil Procedure Code. Thus, according to the contents of the notice the suit contemplated is one against the Secretary of State for India and not against the Provincial Government. In all the circumstances

mentioned in the notice is deemed to be against the Provincial Government, then the notice is given to a wrong person. That being so, the notice in the present case is invalid and improper.

13. It was urged on behalf of the Appellant that the address of the notice to a wrong person was immaterial, that it was properly served on the Collector and hence it may be deemed that the notice given was a substantial compliance of the section and that it should be construed with some regard to common-sense. In support of this contention reliance was placed on the observations of Beaumont C.J. in the case of Chandulal Vadilal v. Government of Bombay, 45 Bombay Law Reporter, page 197 at 200. It is true that in that case his Lordship has observed that one must construe the section 80 of the Civil Procedure Code with some regard to common-sense and the object with which it appears to have been passed. Now, this very ruling was relied on in the lower court and the learned Civil Judge has rightly held that the facts of that case are distinguishable from the facts of the present case and hence the observations made in the said ruling are not applicable to the facts of the present case

14. Next, it was urged that the lower court wrongly held that the relief sought in the plaint was different from the relief set up in the notice. In my opinion the contention is not well - founded. In the notice it is specifically alleged that the Plaintiff is put to a very heavy loss of Rs. 6450/- on account of the unauthorised acts of the Defendant no. 2. Thus, in the notice a specific sum is claimed as damages; while the present suit is one for accounts. In * other words, the amount alleged to have been due by the Defen * o.p.5
dants is uncertain and it may exceed the definite sum as mentioned in the notice. Thus, the two reliefs made out in the notice and claimed in the plaint are altogether different. According to section 80 of the Civil Procedure Code the notice must disclose the cause of action as well as the relief claimed. Now, in view of the different reliefs mentioned above in the notice [illegible] in respect of taking of accounts. Hence the notice is invalid on this ground also. Further, in the notice only the Secretary of [illegible] as made liable for the entire sum. While in the

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plaint both the Defendants are made liable. Thus, the notice is invalid and improper on this count, also. For these reasons there is no substance in the contention raised for the Appellant and the view taken by the lower court is correct.

15. No other point was urged in the appeal and in the result the appeal fails.

O r d e r.

The decree of the lower court is affirmed and the appeal is dismissed with costs.

1st July 1946.

Sd. P.H.Gunjal
District Judge.

" T r u e C o p y "

Copied by:
Compared by:
Original:
Copy:

Clerk of the Court,
District Court, Kanara, Karwar.

53

Civ. A 42 k.

2718—3,750—11-44—R(p)*

ಅಪೀಲಿನೊಳಗಿನ ಹುಕುಮನಾಮೆಯು (ಅರ್ಜಿಕಳಿ, ಸಾ. ಪ್ರ).

(ಫಾರ್ಮ ನಂಬರು ೯, ಪರಿಶಿಷ್ಟ ಗ, ಶೆಡ್ಯೂಲ ೧)

# ಹುಕುಮನಾಮೆಯು

ಶಿವಮೊಗ್ಗ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ್ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ

ಮುಕ್ಕಾಮು ಶಿವಮೊಗ್ಗ ಇಷ್ಟಿ. ನಿಃ 9

ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು 67 ಗಳನೇ ಸೈಕಿ

ಶಿವಪ್ಪ ತಂದೆ ವಿರೂಪಾಕ್ಷಪ್ಪ ಆಲೂರ ಸಾ॥ಸಾ
ಪೈ॥ ಪೀಲುಮಹೋತ್ಸವ ಧಾ॥ ಶಿವಮೊಗ್ಗ
ಸ್ಥಾ॥ಸಾ॥ ಕೆಲಸ

} ಅಪೀಲಿಂಟ (ಮೊದಲನೇ ಸಾಕಿ).

ವಿರುದ್ಧ

1 ಪ. ಮೈಲಾರಪ್ಪ ತಂದೆ ಸಿದ್ದಪ್ಪ ಬೋಂಬಳೆ
2 ಸಾಮಿ ದೇವರ ರಾಮು ಳಂಡಿ ಧರ್ಮದರ್ಶಿಗಳ
ದೇವಾಲಯ ಶೆಟ್ಟಿಕೆರೆ ಸಾ॥ ಶಿವಮೊಗ್ಗ
(1 ಮೃತ ಪಟ್ಟಿದ್ದಾರೆ ಅವರ ಪ್ರತಿನಿಧಿಗಳು)

} ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ ಪ್ರತಿವಾದಿ).

ಶಿವಮೊಗ್ಗ ಇಲ್ಲಿಯ ಪ್ರಿನ್ಸಿಪಲ್ ನೇ ವರ್ಗದ ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೪ನೇ
ಇಸವಿಯ ನಂಬರು 49 ನೇದರಲ್ಲಿ ತಾರೀಖು 13 ನೇ ಫೆಬ್ರವರಿ ತಿಂಗಳ ಸನ್ ೧೯೪೫ನೇ
ಇಸವಿಯ ಹುಳುಮು ಪ್ರಾಂಭ ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ಡಿಕ್ರೀ ಆಲ ಇವನು
13-2-1945 ತಾರೀಖಿನ ಹುಕುಮು ~~ನಾಗೆ 13-2~~ ಮೇಲಿ ಶಿವಮೊಗ್ಗ ಇಲ್ಲಿಯ
ಡಿಸ್ಟ್ರಿಕ್ಟ್ ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೬ ಮುಲುಕ್ಕೆ ತಿಂಗಳನ 1 ತಾರೀಖಿನ ದಿವಸ
ಮುಂಜೆ, ಅಪೀಲಿಂಟನ ತರ್ಫಿನಿಂದ ವಕೀಲ ಸಾ॥ ಶಿವಮೊಗ್ಗ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ
ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ವಕೀಲ ಬಿ.ಎಸ್. ಶಾಮರಾವ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ
ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂದಿರ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

ಪಟ್ಟಿ ಮಾಡಿರುವ ಬಾಕಿ ಕಾಗದಗಳ ಕುರಿತ ಕೈ ಮಾಡಿರುವ ಆರ್ಡರು ಕಾಯಂ ಮಾಡುವದೇ ಸದರಿ ಅಪೀಲಿನ ಮೇಲೆ ಹುಕುಮು ಆಗಿರುತ್ತದೆ.

2718—5,750—11-44—M(p)*

Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ ಹುಕುಮನಾಮೆಯು (ಅರ್ಜಿಳಿ, ಕಾ. ೪೫).

(ಫಾರ್ಮ ನಂಬರು ೯, ಪರಿಶಿಷ್ಟ ಗ, ಶಿಡ್ಯೂಲ ೧)

# ಹುಕುಮನಾಮೆಯು

ಕಾರವಾರ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ

ಮುಕ್ಕಾಮು ಕಾರವಾರ ಇಷ್ಟಿ. ನಿಃ ೧೪

ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು 67 ಸನ್ ೧೯೪೫ನೇ ಫೈಕಿ

ಕಾಶೀನಾಥ ಕಾಮತ ಮತ್ತು ಇತರರು ಅಪೀಲೆಂಟ (ಮೊದಲನೇ ಕಾಯಿ).

ವಿರುದ್ಧ

1 ದ ಮೊ ಕಾಮತ ಮತ್ತು ಇತರರು

2 ನಾಮದೇವ ರಾಮು ಭಂಡಾರಿ ಮತ್ತು ಇತರರು ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ ಪ್ರತಿವಾದಿ).

ಕಾರವಾರ ಇಲ್ಲಿಯ ಅಡಿಶನಲ್ ನೇ ವರ್ಗದ ಸಬ್-ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೫ನೇ ಇಸವಿಯ ನಂಬರು 49 ನೇದರಲ್ಲಿ ತಾರೀಖು 13 ನೇ ಫೆಬ್ರವರಿ ತಿಂಗಳ ಸನ್ ೧೯೪೫ನೇ ಇಸವಿಯ ಹುಕುಮು ಫಾಯಲು ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ಕಾಶೀನಾಥ ಕಾಮತ ಇವನು 13-2-1945 ತಾರೀಖಿನ ಹುಕುಮು ನಾಸ್ಟ್ 43-2 ಮೇಲೆ ಕಾರವಾರ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ ಜಜ್ಜ ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೬ ಜುಲೈ ತಿಂಗಳ ೧ ತಾರೀಖಿನ ದಿವಸ ಮುಂಜೆ, ಅಪೀಲೆಂಟನ ತರ್ಫಿನಿಂದ ವಕೀಲ ಕಾಶೀನಾಥ ಕಾಮತ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ 1ನೇ ಪ್ರತಿವಾದಿ ಆರಾದಾಕಾರರ ಇನ್ನಿತರ ಪ್ಲೀಡರ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂಸಡ್ಟರ್ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

55 — 111



ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆತ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನ್ನು

ಕೊಡಬೇಕು; ಮತ್ತು ಮೂಲ ದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

| ಅಪೀಲೆಂಟ. | ರಕಮು. ರೂ. | ಆ. | ಪೈ | ರಿಸ್ಪಾಂಡೆಂಟ. | ರಕಮು. ರೂ. | ಆ. | ಪೈ |
|---|---|---|---|---|---|---|---|
| ೧. ಅಪೀಲಿನ ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟ್ಯಾಂಪು.... | 0 | 10 | - | ೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟ್ಯಾಂಪು.... | | | |
| ೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ .... | | | | ೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ .... | | | |
| ೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ.... | 0 | 15 | - | ೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ. | | | |
| ೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ .... | 3 | - | - | ೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ .... | | | |
| ೫. 57 ರೂಪಾಯಿಡಳ ಮೇಲೆ ವಕೀಲನ ಫೀ .... | 15 | - | - | ೫. 57- ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ .... | 15 | | 15 |
| ೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ .... | 18 | 2 | - | ೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ .... | | | |
| ೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ .... | | | | ೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟ್ಯಾಂಪು .... | | | |
| | | | | ೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ .... | | | |
| ಒಟ್ಟು.... | 37 | 11 | 0 | ಒಟ್ಟು.... | 15 | 0 | 15 |

ಈ ಹೊತ್ತು ತಾರೀಖು 1 ತಿಂಗಳು July ಸನ್ ೧೯೪6 ನೇ ಇಸವಿಯ ದಿನ

ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು ಸಮನಾಗಿ ಇದೆ.

sd. G. A. nava
ಕಾರಕೂನ.

sd. R. N. Handa
Bench clerk

sd. P. H. Gunjal
4-7-1946
Dist. Judge, Kanara
ಜಿಲ್ಲಾ ಜಜ್ಜು

ಅಪೀಲೆಂಟ ವಕೀಲ. sd. N. T. Shetti

1. sd. M. G. Chandavarkar
2 sd. P. S. Kamat
ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

: ಮೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವವಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಜೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳ ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಆದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು)]

57/43

Suits:
Karwar.
For account and damages.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 5602
Bombay Castle, 10th August 1946.

Read Government Resolution, Legal Department, No.5340, dated the 19th July 1945.

Letter from the District Government Pleader, Kanara, No.171, dated the 11th July 1946, stating that Civil Appeal No. 67 of 1945 filed

In the Court of the First Class Sub-Judge at Karwar.
Civil Suit No. 49 of 1944.
Sharmao Vithal Gaitonde ..... Plaintiff;
Versus
The Province of Bombay and V.R. Haldipur. ..... Defendants.
Claim- Rs. 5/-.

by the plaintiff in the suit noted in the margin was decided by the District Judge, Kanara, on 1st July 1946, when the following order was passed :-

"The decree of the lower Court is affirmed and the appeal is dismissed with costs."

Letter from the District Government Pleader, Kanara, No. 185, dated the 31st July 1946, forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the appeal is recorded.

By order of the Governor of Bombay,
R.M. Mehta
Original R.M. MEHTA,
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Chief Conservator of Forests, Bombay Province,
The Conservator of Forests, Southern Circle,
The Divisional Forest Officer, Western Division, Kanara.

Issued
10/8
IK. 9/8.
Submitted for signature
9/8
AS.